

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Americatel	)	IC No. 02-S77196
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON FURTHER RECONSIDERATION**

**Adopted: January 29, 2007**

**Released: January 29, 2007**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we grant a Petition for Further Reconsideration filed by Americatelel<sup>1</sup> asking us to reverse a finding that Americatelel changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.<sup>2</sup> On further reconsideration, we find that Americatelel's actions did not violate the Commission's carrier change rules.<sup>3</sup> We therefore grant Americatelel's *Further Petition* and deny the complaint.

**I. BACKGROUND**

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> The rules were designed to take the profit out of slamming.<sup>5</sup> The Commission applied the rules to all wireline carriers,<sup>6</sup> and modified its existing requirements for the authorization and verification of preferred carrier changes.<sup>7</sup>

<sup>1</sup> See Petition for Further Reconsideration of Americatelel (filed April 5, 2004) (*Further Petition*) seeking further reconsideration of *Americatel*, 17 FCC Rcd 21723 (2002) (*Initial Order*), issued by the Consumer & Governmental Affairs Bureau (CGB), *aff'd*, *Americatel*, 19 FCC Rcd 4535 (2004) (*Reconsideration Order*), issued by CGB. We are permitted to act on a petition for further reconsideration or may refer it to the Commission for action. See 47 C.F.R. § 1.106(a)(1). We have chosen to act on Americatelel's *Further Petition*.

<sup>2</sup> See *Initial Order*, 17 FCC Rcd 21723 (2002), *aff'd*, *Reconsideration Order*, 19 FCC Rcd 4535 (2004).

<sup>3</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>4</sup> See *id.*; see also 47 U.S.C. § 258(a).

<sup>5</sup> See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

<sup>6</sup> See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

<sup>7</sup> See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.<sup>8</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.<sup>9</sup>

4. The Commission also adopted liability rules for carriers that engage in slamming.<sup>10</sup> If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.<sup>11</sup> Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>12</sup>

5. The Commission received a complaint on June 25, 2002, alleging that Complainant's telecommunications service provider had been changed to Americatele without Complainant's authorization.<sup>13</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>14</sup> CGB notified Americatele of the complaint.<sup>15</sup> In response, Americatele stated that Complainant "received invoices in error."<sup>16</sup> The Bureau found that Americatele failed to produce clear and convincing evidence that Complainant authorized a carrier change and, therefore, that Americatele's actions resulted in an unauthorized change in Complainant's telecommunications service provider.<sup>17</sup> Americatele sought reconsideration of the *Initial Order*. In its *Petition*, Americatele again stated that Complainant was billed in error. In the *Reconsideration Order*, the Bureau determined that Americatele offered no new evidence and denied Americatele's *Petition*.<sup>18</sup> Americatele seeks reconsideration of the *Reconsideration Order*.

---

<sup>8</sup> See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

<sup>9</sup> See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

<sup>10</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

<sup>12</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>13</sup> Informal Complaint No. IC 02-S77196, filed June 25, 2002.

<sup>14</sup> 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>15</sup> Notice of Informal Complaint No. IC-02-S77196 to Americatele from CGB, dated July 12, 2002.

<sup>16</sup> Americatele's Response to Informal Complaint No. IC-02-S77196, received August 6, 2002 (*Response*).

<sup>17</sup> See *Initial Order*, 17 FCC Rcd 21723 (2002); see also 47 C.F.R. § 64.1150(d).

<sup>18</sup> See *Reconsideration Order*, 19 FCC Rcd 4535 (2004).

## II. DISCUSSION

6. In its *Further Petition*, Americatel asserts that Complainant was never an Americatel presubscribed customer.<sup>19</sup> Americatel avers that the complaint concerned a disputed bill related to Americatel's "dial around" long distance services, and that there was no allegation that Americatel switched Complainant's presubscribed long distance service.<sup>20</sup> According to Americatel, the complaint named "1010-123 Americatel Corp.," and that "1010-123 service" is Americatel's dial around long distance service, not a presubscribed service.<sup>21</sup> Thus, it argues the case does not involve the unauthorized switching of long distance service.<sup>22</sup>

7. Based on the record before us, we reverse the *Initial Order* and the *Reconsideration Order* and grant the *Further Petition*. Upon further review, we agree with Americatel that the complaint involves Americatel's "1010-123" service, *i.e.*, dial-around long distance service, and not a switch of presubscribed long distance service. Consequently, there was no violation of our carrier change rules. Accordingly, we grant the *Further Petition*.

## III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Further Petition for Reconsideration filed by Americatel on April 5, 2004, IS GRANTED and the complaint filed against Americatel on June 25, 2002, IS DENIED.

9. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau

---

<sup>19</sup> See *Further Petition* at 2.

<sup>20</sup> *Id.*

<sup>21</sup> See *id.* at 2-3. Americatel states that, to access its 1010-123 service, a customer need not have a contract with Americatel and need only dial 1010123 + 1 and the area code and number a customer is calling to access Americatel's network and obtain Americatel's dial around rates. *Id.* at 3.

<sup>22</sup> *Id.* at 3.